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In The

Supreme Court of the United States

October Term, 1986

IN RE: CHRISTOPHER J.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner seeks to overturn a decision of the Maine Supreme Judicial Court (hereinafter the Maine Supreme Court) affirming an order of the trial court terminating the Petitioner's parental rights to her son Christopher J. *See In Re: Christopher J.*, 505 A.2d 795 (Me. 1986). The unique facts in this matter are concisely set forth in the introduction of the Maine Supreme Court's opinion:

> Christopher was born on August 20, 1971, to Sybil [Petitioner], then a 15-year-old unwed high school student. Sybil and her family decided that adoption was in the best interest of the baby. Soon after his birth, however, it became apparent that Christopher had serious medical problems that would prevent his immediate adoption. Therefore, on September 23, 1971, Sybil voluntarily placed Christopher in the protective custody of the Maine Department of Health and Welfare, now renamed the Department of Human Services (Department).
>
> The Department placed Christopher in the foster care of Mrs. M. when he was 11 weeks old. He has remained in her home continuously to the present, and she wishes to adopt him. Christopher has a liver condition called Alpha I Anti-Trypsin Deficiency, which has led to cirrhosis of the liver and has required him to undergo a series of surgeries and hospitalizations. At the time the District Court entered its order on October 11, 1985, Christopher was waiting for an urgently needed liver transplant. Mrs. M. has cared for Christopher throughout all these physical difficulties. When Christopher was one year old, she told the Department that she wished to adopt him, and repeated that request several times thereafter. Mrs. M.'s income, however, was insufficient to pay for Christopher's extraordinary medical expenses, and it was not until March of 1984 that the Department had

> the funds available to provide for a subsidized adoption pursuant to 19 M.R.S.A. § 541 (Supp. 1985-1986). For that reason Christopher has remained in Mrs. M.'s foster care for over 14 years.
>
> Sybil has had no contact with Christopher since he was an infant. When he was two years old he became seriously ill and was expected to die. Believing that she was acting in Sybil's best interest, Sybil's mother told her that Christopher had died. Sybil remained under the impression that Christopher was dead until the Department contacted her on May 2, 1983, regarding a new federally required judicial review of Christopher's foster care. The Department had never attempted to contact Sybil before that time. Sybil immediately told the Department that she wanted to meet Christopher. However, because of Christopher's physical and mental condition, his doctors advised against such a meeting. Sybil complied with their recommendation. On July 2, 1984, she filed a petition for change of custody in District Court.
>
> In June 1985 the Department petitioned for termination of Sybil's parental rights pursuant to 22 M.R.S.A. § 4055 so that Christopher could be adopted by Mrs. M.

In Re: Christopher J., 505 A.2d at 796.

As described above, following the Department's renewed contact with Sybil in 1983,[1] she requested a meeting

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1. It was not until 1983 and the enactment of Maine P.L. 1983, Ch. 185, amending section 4038 of the Child and Family Services and Child Protection Act, 22 M.R.S.A. §§ 4001-4086 (Supp. 1985-1986) requiring periodic judicial reviews of the circumstances of *all* children placed in the Department's custody, that the Department came under any legal obligation to recontact Sybil. Prior to 1983, section 4038 provided that no such review was required in the case of a child who, like Christopher, had been placed under the Department's custody pursuant to former section 3792 prior to April 3, 1980.

with Christopher and eventually petitioned to regain custody of him. Christopher's extremely precarious physical condition led the parties to agree to a series of psychological and physical evaluations of Christopher to determine whether such a meeting or shift in custody could be achieved without harming him. *Id.* Those professionals ultimately concluded not only that contact between Christopher and Sybil would be extremenly harmful to him, but also that Christopher should be freed for adoption by Mrs. M. as soon as possible. *Id.* at 798-800.

In affirming the lower court's termination of the Petitioner's parental rights, the Maine Supreme Court extensively referrred to and quoted from the findings of the professionals. *See, e.g., id.* at 798. They included the assistant clinical director of the Department of Psychiatry at the Judge Baker Guidance Center, Dr. David DeMaso; a psychiatrist, Dr. James Maiers; Christopher's gastroenterologist, Dr. Richard Grand, and Christopher's pediatrician, Dr. Patricia Adams. The testimony of those professionals was to the effect that Christopher's emotional stability had a direct effect on his physical well-being, and the stress involved in the possible reintroduction of his biological mother to Christopher could threaten his very life. Furthermore, at the time of the termination hearing, it was anticipated that Christopher would soon undergo a liver transplant, and that his emotional stability could determine the success or failure of the surgery. *Id.* at 799. Under these circumstances, the Maine Supreme Court found that the trial court was justified in its determination that the fragile and serious nature of Christopher's medical condition created a situation such that Sybil would

simply be unable to accept responsibility for Christopher or protect him from jeopardy within a time reasonably calculated to meet his needs, and that the statutory test for termination of parental rights under Maine law had therefore been met, 22 M.R.S.A. § 4055(1)(B)(2). *In Re: Christopher J.*, 505 A.2d at 797.

In her appeal below, Petitioner claimed that the Department had failed to present sufficient evidence to support that finding. Petitioner did not present a constitutional claim in the State court proceedings before the Maine Supreme Court. The Maine Supreme Court upheld the trial court's findings of fact and affirmed the termination of her parental rights. This Petition followed.

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ARGUMENT

I. THE PETITION SHOULD BE DISMISSED FOR FAILURE TO COMPLY WITH SUPREME COURT RULE 33.

When a Petition fails to comply with the form requirements set out in Supreme Court Rule 33, the Petition is returned by the Clerk to the Petitioner and may be corrected and resubmitted to the Clerk "provided that new and proper copies are *promptly* substituted" (emphasis added) Sup.Ct.R. 33.7. The Court may impose sanctions on a Petitioner who fails to comply with any provision of Rule 33, which sanctions may include dismissal of the action. In this case, Petitioner's lengthy delay in substituting a corrected Petition constitutes a clear violation of Rule 33.7, and the only appropriate sanction for such a serious violation is dismissal of the Petition.

The original Petition in this matter, filed on or about June 5, 1986, was immediately returned to the Petitioner's attorney because the Petition had not been printed in compliance with Rule 33.1.[2] The corrected Petitions were not substituted until on or about December 15, 1986, fully *six months* after the original filing. It is simply not possible to consider a six month delay to be a *prompt* substitution of the Petition. Indeed, in several cases, the Court has suggested that three (3) weeks constitutes the outside limit for such a substitution. In *Huffman v. Pursue, Ltd.*, 419 U.S. 892 (1974), where the Appellant's brief failed to comply with conciseness and printing requirements, the Court struck Appellant's brief, but allowed Appellant twenty (20) days within which to substitute a brief in compliance with the rules. Similarly, in *Snider, et al. v. All State Administrators,* 414 U.S. 685 (1974), the Court, having denied a Petitioner's request to dispense with printing requirements, allowed the Petitioner twenty-one (21) days to file a conforming Petition. These cases not only provide warning to counsel that the Court takes filing requirements seriously, they further provide clear notice of the Court's view of "prompt" substitution of filings.

Under the circumstances of the case at bar, the only appropriate sanction for a six-month delay in substituting corrected documents is dismissal of the Petition. The time requirements set out in the Court's rules are established to provide certainty in determining the finality of judg-

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2. The original petition, required to be filed within 90 days of the Maine Supreme Court's March 14, 1986 denial of the Petitioner's request for rehearing, was timely filed.

ments and to preserve the integrity of the judicial system.[3] In a matter such as this, the Petitioner's failure to substitute *promptly* constitutes a unilateral extension that entirely defeats the purpose of these rules and creates needless uncertainty as to the finality of a decision of the State's highest court.

Petitioner's six month delay is particularly egregious here. The stability and well-being of a physically and emotionally vulnerable child lie at the heart of this case. Following the denial of Petitioner's request to the Maine Supreme Court for rehearing on this matter, Christopher was adopted by his foster family, and thereby finally given the permanence that, as the decision of the Maine Supreme Court made eloquently clear, was of paramount importance for the boy. Petitioner's actions in this matter place the finality of that adoption in question and have the ultimate effect of keeping this child's life on hold while creating continuing uncertainty as to his future. Seen in this context, the only appropriate sanction for Petitioner's

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3. As this Court has emphasized in other contexts, the "uncertainties inherent in litigation should not be needlessly prolonged." *Commissioner v. Bedford's Estate*, 325 U.S. 283, 288 (1945). In *Bedford's Estate*, the Court, called on to decide whether the time for filing a Petition for Writ of Certiorari in certain circumstances ran from the date of the lower Court's "Order For Mandate" or the date of a later, more formal document entitled "Opinion," determined that time should begin running at the *earliest* pronouncement of the judgment being rendered.

lengthy delay in substituting corrected documents should be a complete dismissal of the Petition.

II. REASONS FOR DENYING WRIT

If the Court decides not to dismiss the Petition, it should nonetheless deny it for two independent reasons. First, Petitioner failed to raise in the State courts the constitutional issues she seeks to have reviewed here. That failure is made apparent by review of Petitioner's brief to the Supreme Court, that Court's opinion, and indeed her own Petition for Writ of Certiorari. Her failure to raise the constitutional claim below requires, under 28 U.S.C. § 1257(3), and, *e.g., Webb v. Webb,* 451 U.S. 493 (1981), therefore, that her Petition be denied. Second, the Petition does not demonstrate any reason for this Court to grant certiorari. There is no conflict among the courts with respect to this issue and the case presents no substantial federal question. Moreover, this Petition arises from a factual pattern so unique that the Court should refuse to exercise its discretion to grant certiorari.

A. PETITIONER'S FAILURE TO RAISE HER CONSTITUTIONAL CHALLENGE BELOW PRECLUDES GRANT OF REVIEW HERE.

The proceedings below and the Petition for Writ of Certiorari demonstrate that Petitioner failed to raise in the state courts any constitutional challenge to the Maine termination statute below. In her brief to the Maine Supreme Court, Petitioner characterized the issues

as being essentially evidentiary.[4] The Table of Authorities contained in Petitioner's brief to the Supreme Court[5] and the full text of that brief reveal that nowhere therein did Petitioner cite to the Fourteenth Amendment of the United States Constitution, nor to any other United States constitutional provision. Furthermore, the language of Chief Justice McKusick's decision makes it abundantly clear that Petitioner failed to present the constitutional challenge below, and that the Maine Supreme Court reviewed the Trial Court's decision solely for the sufficiency of the evidence.[6] Finally, required by

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4. Relevant portions of Petitioner's Brief to the Maine Supreme Court are reprinted herein, without the attachments. Appendix at p. 1. (Hereinafter App. 1). Petitioner therein stated the issues presented as follows:

STATEMENT OF ISSUE AND ARGUMENT

ISSUE: Did the District Court erroneously terminate the Appellants parental rights?

ARGUMENT I: The provisions of Title 22 M.R.S.A. § 4055(3) are jurisdictional and the state failed to meet the burden of this jurisdictional requirement.

ARGUMENT II: The findings of the District Court were not rationally supported by clear and convincing evidence and the order of termination is clearly erroneous. App. 5.

Argument 1 of Petitioner's Brief below addresses a statutory provision which establishes that "the court shall not order termination if the child is at least 14 years old and objects to the termination." 22 M.R.S.A. § 4055(3). The trial court found that the child did not object, and the Maine Supreme Court affirmed that finding. That argument is not relevant to the question Petitioner now presents to this Court.

5. App. 3.

6. Writing for the five member majority, Chief Justice McKusick set out the issues on appeal as follows:

The District Court found that Sybil is *unable to protect Christopher from jeopardy* and that the circumstances are unlikely to change within a time that is reasonably cal-

(Continued on following page)

Supreme Court Rule 21.1(h) to specify within her Petition for Writ of Certiorari the time and manner in which she raised her federal question below, Petitioner is forced to concede that the issue formulated on appeal to the Maine Supreme Court was that "The findings of the District Court were not rationally supported by clear and convincing evidence and the order of termination is clearly erroneous." (Petition at p. 8).

Under these circumstances, this Court's decisions require that the Petition be denied. The Court has repeatedly held that it is without jurisdiction to review federal questions not raised below, *Webb v. Webb,* 451 U.S. at 495, and has "refused to decide federal constitutional issues raised here for the first time on review of state court decisions." *Tacon v. Arizona,* 410 U.S. 351, 352 (1973), *Cardinale v. Louisiana,* 394 U.S. 437, 438 (1969). As the Court emphasized in *Webb,*

> there are powerful policy considerations underlying the statutory requirement and our own rule that the federal challenge to a state statute or other official act be presented first to the state courts. These considerations strongly indicate that we should apply this general principle with sufficient rigor to make reason-

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(Continued from previous page)

culated to meet his needs and also that she is *unable to take responsibility* for Christopher within a time that is reasonably calculated to meet his needs. The District Court also found it to be in the best interests of Christopher that Sybil's parental rights be terminated. Sybil argues that those findings are not supported by clear and convincing evidence and that they are clearly erroneous. . . . After careful review, we hold that the record before the District Court did indeed contain the clear and convincing evidence required to support its findings of fact. (emphasis in original)

In Re: Christopher J., 505 A.2d at 797.

> ably certain that we entertain cases from state courts only where the record clearly shows that the federal issue has been properly raised below.

Webb v. Webb, 451 U.S. at 499.

B. PETITIONER HAS FAILED TO ESTABLISH ANY GROUND FOR REVIEW BY THIS COURT.

Independently, this Court ought not to grant the Petition for Writ of Certiorari because Petitioner has failed to present any reason for so doing. There exists no conflict among either the Circuit Courts of Appeal or among any State Courts as to any issue raised in this case, there was no error below, and no important federal question has been presented. Moreover, the unusual facts of this case make it totally inappropriate for certiorari.

While this case certainly exemplifies the Solomon-like decisions facing trial courts in family matters, a review of the State's termination statute and the procedure below demonstrates that no error occurred. Maine's Termination of Parental Rights law requires that the trial court make two findings prior to terminating parental rights: first, that termination would be in the best interests of the child, and second, as relevant here, that,

> Either:
>
> (i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;
>
> (ii) The parent has been unwilling or unable to take responsibility for the child within a time which is rea-

> sonably calculated to meet the child's needs; . . . . [or]
>
> (iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to section 4041.

22 M.R.S.A. § 4055(1)(B)(2)(b). Each of these findings must be supported by clear and convincing evidence. 22 M.R.S.A. § 4055(1)(B)(2). On appeal, the Maine Supreme Court reviewed those statutory standards, *In Re: Christoher J.*, 505 A.2d at 797, and specifically referred to *Santosky v. Kramer*, 455 U.S. 745 (1982), in noting that "due process requires proof by clear and convincing evidence before parental rights may be terminated". *In re: Christopher J.*, 505 A.2d 797. The Court then reviewed the complex set of facts presented in this case and concluded that, "after careful review, we hold that the record before the District Court did indeed contain the clear and convincing evidence required to support its findings of fact." *Id.* Hence, the Court below carefully observed the due process safeguards announced in *Santosky* and properly applied the state statute to the unusual facts of this case.

Because Petitioner received the requisite procedural due process, no substantial federal question has been presented. This Court will exercise its discretion to grant certiorari in a case arising out of the State courts only where "a State court . . . has decided an *important question of federal law* which has not been, but should be, settled by this Court . . .". (emphasis added). Sup.Ct.R. 17.1(c). In order to present to this Court an important federal question arising out of a state's treatment of family law issues, a petitioner must do more than simply challenge the state's procedures. *Lassiter v. Department*

of Social Services, 452 U.S. 18 (1981). The Court's historical deference to each state's family law procedures, *see, e.g., U.S. v. Yazzell,* 382 U.S. 341 (1966), should be overcome only where a petitioner can demonstrate a clear constitutional violation, such as that demonstrated in *Santosky.*

In the case at bar, the State's statutory scheme not only complies with the standard of proof required by this Court in *Santosky,* but also satisfies the Court's concern that parental rights may not be terminated simply on the basis of the best interest of the child.[7] As amply set out above, the Court below found Petitioner unable to protect the child from jeopardy, unable to take responsibility for the child, and also found that those circumstances are unlikely to change within a time reasonably calculated to meet Christopher's needs. Neither *Santosky* nor the due process clause of the Fourteenth Amendment requires more.

Finally, the extremely unusual circumstances presented in this case argue against the granting of certiorari. Christopher was born with an extremely rare and usually fatal liver disease. Physicians working with Christopher during his infancy did not expect him to live to reach school age. *In Re: Christopher J.,* 505 A.2d at 796; P., 5. Petitioner Coombs relinquished Christopher to the Department of Human Services in the early seventies, at a time when subsidized adoptions of special needs children were unavailable. After relinquishing her rights to Christopher, Sybil's mother told her the boy had died. *Id.* Due to

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7. *See Santosky v. Kramer,* 455 U.S. at 761, n. 10.

advances in medical technology as well as the consistent and nurturing care provided to Christopher by one stable foster home, he has lived much longer than expected, has successfully undergone a liver transplant,[8] and has established a close and primary relationship with his foster mother. At the time of the hearing below, he had lived his entire *fourteen years* with that foster mother.

The facts presented in this case are very unlikely to recur and are not readily analogized to other termination cases. A decision addressing the parental unfitness issue made in the context of this factual situation would be of little assistance to state courts struggling with current cases regarding termination of parental rights.

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8. The liver transplant had not occurred at the time of the trial, but the Maine Supreme Court noted that it had been successfully accomplished on December 11, 1985 during the pendency of the appeal below, *In Re: Christopher J.*, 505 A.2d at 796, n. 1.

CONCLUSION

For the reasons discussed above, the Respondent respectfully requests that the Petition for Writ of Certiorari be dismissed or in the alternative denied.

Respectfully submitted,

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Dated: February 12, 1987

APPENDIX

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO. YOR-85-410

IN RE: CHRISTOPHER J.

ON APPEAL FROM THE
MAINE TENTH DISTRICT COURT
DIVISION OF EASTERN YORK

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STATEMENT OF ISSUE AND ARGUMENTS

ISSUE: DID THE DISTRICT COURT ERRONEOUSLY TERMINATE THE APPELLANT'S PARENTAL RIGHTS?

ARGUMENT I: THE PROVISIONS OF TITLE 22 M.R.S.A. § 4055(3) ARE JURISDICTIONAL AND THE STATE FAILED TO MEET THE BURDEN OF THIS JURISDICTIONAL REQUIREMENT.

ARGUMENT II: THE FINDINGS OF THE DISTRICT COURT WERE NOT RATIONALLY SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, AND THE ORDER OF TERMINATION IS CLEARLY ERRONEOUS.

ARGUMENT II: THE FINDINGS OF THE DISTRICT COURT WERE NOT RATIONALLY SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND THE ORDER OF TERMINATION IS CLEARLY ERRONEOUS.

Title 22 M.R.S.A. § 4055 (B. p.35) requires a two prong test by the District Court in terminating parental rights when there is no parental consent to such a termination. The Court must find that the termination is in the best interests of the child, and then the Court must find that the unconsenting parent is unable or unwilling to protect the child from jeopardy, or take responsibility for the child *in a time reasonable calculated* to meet his or her needs. (Emphasis added). Further, the burden of proof is on the proponent of termination, in this case the State, by clear and convincing evidence. *In re Sabrina M. et. al.*, 406 A. 2d 1009 (Me. 1983).

Based on the uncontroverted evidence at hearing of this particular child's unique physical and emotional condition pending a then imminent liver transplant the District Court found "that it is in the best interests of Christopher Paul J. that the parental rights of his biological mother . . . be terminated". (A. p.47). The Court continued to find that the natural mother was *not* unwilling to protect the child or take responsibility for the child, "but rather that she is unable to do so given the circumstances of Christopher Paul J." When the result of this decision imposes the severest civil penalty, that of terminating a parent's rights and foreclosing the future possibility of any legal rights between a mother and

child the Law Court must apply a high standard of review. This Court has done so in many other cases, but has rarely been called upon to deal with a case such as this that would require them to agonize as King Solomon must have prior to rendering his decision. *Danforth v. State Department of Health and Welfare,* 303 A. 2d 794 (Me. 1973); *Meyer V. Nebraska,* 262 U.S. 390 (1922); *Pierce v. Society of Sisters,* 268 U.S. 510 (1924); *Stanley v. Illinois,* 405 U.S. 645 (1972); and *Santosky II v. Kramer,* 455 U.S. 745.

There is no factual dispute that this child has been severely and chronically ill since birth; there is no factual dispute that the natural mother, at 15 years old, made a decision with her family to give her unborn child up for adoption and entered the St. Andre's Home for that purpose; there is no factual dispute that, at 15 years old she consented to State custody so that the child could be treated and adopted when St. Andre's refused to place him; there is no factual dispute that this natural mother had no direct contact with the Department from September of 1971 until the Spring of 1983; there is no factual dispute that this natural mother reasonably believed this child to have died in January of 1973; and there is no factual dispute that the Department did not contact the family at all between January of 1973 and the Spring of 1983; and there is no factual dispute that at least one employee of the Department knew in 1978 that the natural mother believed the child to be dead.

There is no factual dispute that the foster mother has been a loving and caring and responsible parent to this child almost since his birth, or that he considers her his psychological parent. But the District Court specifically found that "the biological mother. . . . . would be a loving caring mother as the foster mother. . . . has been for the past 14 years." This is not a case where this Court can somehow measure the extent of parental misconduct in determining whether the State has met it's burden. Nor is this a case, given the child's physical condition, where this Court can only look at the extent of the State's gross negligence, as shocking as it is.

The State, as it's Petition for Termination alleges (A. p. 17), would have this Court find that the natural mother, at 15, 16 and 17 years old, refused to assume responsibility for this child (or convince her parents to do so), refused to visit with the child, and that somehow, although she believed him dead, should have sought some official confirmation. They would have this Court find that given the circumstances between the fall of 1971 and the winter of 1973 all lack of compliance by the Department for ten years becomes immaterial or irrelevant. The facts adduced at trial, and the findings of the District Court, controvert the picture painted by the State in it's Petition and Closing Arguments. The judge had the opportunity to judge the demeanor of the mother and grandmother, as well as the Department workers who testified, and found a loving caring woman who wants to care for, or help care for her child.

There can be no question that had this child been physically normal a reintroduction to his natural mother

would have occurred in 1983. Given the facts and circumstances it would seem that the issue is the meaning of "a time reasonably calculated to meet Christopher's needs" in the context of this case. It is here that the Court must consider the State's efforts, "or lack thereof as a factor to be considered in evaluating the parents' conduct". *In Re Crystal S.*, 438 A. 2d 1210 (Me. 1984).

No one can undo the fact that Christopher remains unadopted at age 14 years old whether it is because there was insufficient subsidy money within the State until 1983, or whether because his natural mother refused to consent after 1983. Any phychological damage incurred from remaining in foster case long term would have been done by 1983, and the adoption laws in this State contemplate that a 14 year old would know all the facts relating to his background prior to consenting to the adoption. The thrust of the State's evidence at hearing, and the thrust of the decision of the Court in determining that the mother would be unable to care for him given his circumstances, clearly related to the pending liver transplant. This transplant has been accomplished and only time will tell the impact on the health of this child, and his ability to absorb and deal with his family history.

The law must provide, in these unique circumstances, an equitable means to fashion alternative plans which would allow for the best for both mothers and the child; and which would allow for an alternative when neither adoption or termination are appropriate, as in the case of an older child, so that the foster home could continue but the child could be reintroduced to and establish some bond with his natural family. What the State has failed to consider is that Chris-

topher not only has a real mother, but a real brother and sister. *In Re Kenneth,* 439 A. 2d 1366 (R.I., 1982); *In Re LaFreniere,* 420 A.2d 82 (R.I., 1980); *In the Matter of Custody and Guardianship of Dana Marie E.,* 492 N.Y.S. 2d 340 (1985); *N.J. Division of Youth and Family Services v. Huggins,* 118 N.J. Super. 88, 371 A. 2d 841 (1977).

Given the behavior of the Department and the age of the child, a period reasonably calculated to meet the child's needs, in these circumstances, cannot commence until the child knows and meets his mother. The impending liver transplant was a factor which the Court used as a cut off time for the reasonable period based on some perception that the transplant team might take the child off the list if there were no termination order. This impression was given at the hearing. However, this does not rise to a legal standard, and has been shown to be erroneous by the fact that the transplant occurred without the termination or adoption.

The relevant case law balances the behavior of the parent; the efforts of the State and the best interests of the child in determining the desirability of termination. The State must make some effort when the child has sufficiently recovered to introduce this mother to Christopher; the mother is willing to meet and care for the child without disrupting his love for his foster mother, and this child has the right to know his mother, brother and sister exist prior to any termination or subsequent adoption.

CONCLUSION

At the very least the requirements of Title 22 M.R.S.A. 4055 (e) require that the evidence presented at a termination hearing by the proponent show, by clear and convincing evidence that the child, if 14 years old, does not object to the termination of his or her parents rights. At the very least, if the is implied by the evidence, there must be a clear and convincing showing that the child knows that his parent opposes the termination and that the child has knowledge of the proceeding. The burden of making this showing lies upon the proponent of termination. This requirement is jurisdictional and the merits of the case of the proponent are meaningless without the meeting of this threshold burden.

In determining a standard for "a time reasonably calculated to meet the needs of the child" the Court must balance the willingness, abilities and conduct of the parent; the activities of the State and the best interests of the child. The reasonableness of the time cannot be determined by one event, no matter how grave, taken out of the context of the entire history of the situation before the court. In this case it is impossible to begin to calculate a reasonable time prior to a reintroduction of this natural mother with her child. Given the circumstances even if this were to take another year that would not be unreasonable. The desires of the transplant team, and the pain of the foster mother,

while real and sympathetic cannot override the parental bond of mother and child.

Dated: December 13, 1985

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I made service of the within Brief and Appendix upon the Petitioner/Appellee State of Maine by hand delivering two copies of said Brief and Appendix to counsel for said Petitioner/Appellee.

Dated: December 13, 1985

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